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REVISED 3/15/2012

March 15, 2012

The Honorable John Walsh
Chairman
Michigan House of Representatives
House Judiciary Committee
P.O. Box 30014
Lansing, MI 48909

RE: SENATE BILL 557 (S-2) – REVOCATION OF PATERNITY ACT

Dear Chairman Walsh and distinguished committee members:

The National Family Justice Association, a national non-profit educational organization on behalf of children and their families, wishes to submit both oral and written testimony before the Michigan House Judiciary Committee in support of Senate Bill 557 (S-2). In addition, we are recommending this committee incorporate a tie-bill amendment to MCL 722.722 – False Complaint; Penalty.

Although this committee will likely receive many compassionate testimonial social positions both for and against the aforementioned legislation, there is but one position that demands precedence, especially for married men. It is as follows:

In a modern day world equipped with irrefutable evidence analyses, **Michigan's presumption of paternity legitimacy is no longer relevant nor appropriate.** "Legal presumptions substitute for facts that cannot be definitively proved or disproved. Presumptions that once provided efficient and effective resolutions of complex social issues have over time become superficial substitutes for the truth."[1]

Michigan's presumption of legitimacy holds that a child born during a marriage is the legal issue of both spouses which was the fundamental principle of the English Common Law

[1] Kaplan, Diane, "Why truth is not a defense in paternity actions", Texas Journal of Women & the Law, 10/01/00

Lord's Mansfield Rule that could only be rebutted by proof of the husband's impotence, sterility, or non-access to the wife.

But in many Michigan courts today, even if the husband can successfully rebut the presumption on one of these grounds, the court may still exclude DNA evidence of non-paternity under the doctrine of ***paternity by estoppel.*** Paternity by estoppel is similar to equitable estoppel..."which bars a person who made a misrepresentation from denying the truth if by doing so he would harm another who relied on the representation to his detriment"[1]

Paternity by estoppel is both similar to and different from equitable estoppel. Like equitable estoppel, paternity by estoppel bars a married man from denying the legitimacy of a child born to his marriage if he represented to the child or to the world that he was the child's father; if he developed an emotional relationship with the child" or provided financial support for the child; or if he prevented the child from developing a relationship with his or her true biological father. Unlike equitable estoppel, which penalizes the offending party, paternity by estoppel penalizes an innocent party-the husband-to avoid penalizing another innocent party-the child. The husband has not knowingly or intentionally induced the child's reliance on his misrepresentation of paternity because the husband, too, has been induced to rely on the misrepresentation of paternity perpetrated by his wife. However, paternity by estoppel prevents the husband from rebutting the presumption of legitimacy since once the husband is estopped to deny his parentage, biological evidence of non-paternity becomes irrelevant. The wife, in turn, is barred from testifying that she fraudulently induced one man to assume the parenting obligations of another man, because under paternity by estoppel, the wife's deceit is as irrelevant as the husband's DNA.[1]

The term often used to describe the aforementioned events is "paternity fraud" – marital or non-marital. And although a crime is committed, the perpetrators are never held accountable despite Michigan law penalizing making a false paternity complaint [MCL

722.722]. Such were the unfortunate events surrounding my own personal divorce case in 1995.[2]

With increased state efforts to establish paternities in the hospitals at birth, incidents of paternity fraud have increased significantly. In Michigan in 2010, of the total 113, 438 hospital births, 48,030 were to un-wed mothers or 42.3%. Paternities were established in 62.4% of these un-wed cases resulting in 29,984 men named as fathers as a result.[3] However, in Wayne County, there were a total of 22,483 hospital births with 13, 039 to un-wed mothers or 45%. Of these, only 48% paternities were established resulting in 6,127 men voluntarily or unknowingly (default) named as fathers. Many of these default cases wind up in the courts as these fathers learn much later that they have a child support order for the child and typically significant child support arrearages which along with the hospital birthing costs, have accumulated greatly since many un-wed mothers are on state assistance programs.

Previous publicly-available national data from the American Association of Blood Banks, the governing body for the nation's genetic testing laboratories, shows a consistent result of approximately 1 in 3 men (29%) presumed to be fathers and tested for paternity are Excluded as the biological fathers of their alleged children. When applied to the Michigan data, this means over 8,700 men may not be the biological fathers presumed to be theirs. In Wayne County, actual statistics compiled during 2010 by a local paternity testing company on behalf of the Wayne County Friend of the Court when testing their default cases, showed that 80% of the presumed fathers were Excluded.[4]

The current version of SB 557 (S-2) makes no provision for addressing any consequences for the perpetrators of the criminal fraud, the mothers who knowingly deceive others regarding the probabilities of paternity. Current Michigan law [MCL 722.722] provides only misdemeanor penalties for any person making a false complaint as to the identity of the father.

[2] Oakland Circuit Court 95-490113-DM, 8/21/1996; MCOA 197902, 4/03/1998
[3] Michigan Department of Human Services, 2010
[4] Accurate DNA Testing, LLC, Business Summary Report to the 3rd Circuit Court of Michigan

No one has yet been prosecuted under this law in Michigan despite thousands of cases of paternity fraud. Since misdemeanor penalties carry a 1 year time limit while SB 557 carries a time limit of up to three years and the monies involved in a paternity fraud case typically exceed $1,000, it is thus considered fitting and appropriate to amend MCL 722.722 to a **felony crime with a up to a three-years statute of limitations for claims** (see enclosed draft).

As stated in the legislative bill analysis for SB 557 (S-2)…" In addition to the individual parties, the State has an interest in ensuring that the actual father of a child is responsible for the payment of child support and medical expenses. This legislation could help families avoid or end government assistance and become self-sufficient. In short, the bills would bring fairness, compassion, and modernity to the law, while ensuring that the child's best interests were the primary consideration. **We believe this issue is a very fundamental question of fairness and the right to be exonerated by irrefutable evidence.** If DNA analysis can establish paternity could it not also disestablish same? No matter the outcomes, someone will lose. Is it fair and right for a man to be forced unknowingly to pay child support for another man's child? On the other hand, a temporary or permanent loss of child support can adversely affect the health, education and well-being of a child. However, that is a poor argument because even though the child may need financial child support, it doesn't mean it must be provided by a man who is not his father. The actual biological father of each child should be established whenever possible and he alone made responsible for the overall support of his offspring. Otherwise, should we simply grab some man off the street and require him to pay child support for children that aren't his…just because we deem the support so important? We think not…along with establishing real consequences for those who intentionally perpetrate paternity fraud.

Finally and perhaps most importantly, there is one more victim of Michigan's presumption of paternity laws, policies, and practices…the Child. "Does a child have equal protection under

the law – a right to know the medical history of both biological parents to help ensure a healthy lifestyle?"[5]

We urge this committee to include a tie-bar amendment to MCL 722.722 and vote the complete legislation package out of committee for public consideration by the full body of the people's representatives in the House of Representatives.

Respectfully,

Murray Davis
Board President

Cc: Judiciary Committee Members Sen. Steven Bieda

Enclosures: Support Documentation to committee

[5] Davis, Murray, "Child Should have the right to know genetic information, Detroit Free Press, March 6, 2007

[RECOMMENDED AMENDMENT DRAFT]

THE PATERNITY ACT (EXCERPT)
Act 205 of 1956

722.722 False complaint; penalty. [M.S.A. 25.502]

Sec. 12. Any person making a false complaint under this act as to identity of the father, or the aiding or abetting therein, shall be guilty of a felony when the action is filed within 3 years after the child's birth.

This section shall not apply to an authorized official the department of social services who in good faith filed

a complaint under this act based upon nformation and belief.

History: 1956, Act 205, Eff. Aug. 11, 1956;—Am. 1972, Act 98, Eff. Mar. 30, 1973.

Detroit Free Press
www.freep.com

Child should have right to know genetic information

March 6, 2007

BY MURRAY DAVIS

It is frustrating when our laws or proceedings in the judicial system eschew common sense, medical science and society. An important case in point is Minor J, the Michigan youth seeking the identity of his birth father in order to know his genetic medical history and any predispositions to diseases.

Such expectations are already standard practice for sperm or egg donors, and Michigan's full disclosure adoption law requires that the medical histories of birth parents accompany the adopted child on to his or her new life.

However, through a technicality, Minor J's rights have fallen through some courtroom cracks.

Diane J and Mr. J were married in 1982. They divorced in 1995. Minor J was born in 1989. The divorce agreement called for joint custody, with Mr. J paying child support. In 2004, Mr. J began to doubt that the now 17-year-old boy was his biological child, a suspicion confirmed by two separate DNA tests. Minor J asked his mother for the identity of his father. She gave another name, but three months later another DNA test determined that this man, Mr. X, was also not the biological father.

Diane J refuses to provide any other names and, despite these DNA results, still ridiculously asserts that Mr. J is the biological father.

Minor J, represented pro bono by nationally known family law attorney Henry Baskin of Birmingham, has filed suit against his mother. The case is now before the Michigan Court of Appeals after a Macomb County circuit judge ruled that Minor J had no legal standing to bring the suit. Under antiquated Michigan law, Minor J is a legitimate child, as Mr. J and Diane J were married at the time of his conception and birth. And, it was ruled, a legitimate child cannot ask the courts to name another man as his father.

Although this case has revealed marital paternity fraud, it is not a paternity establishment case in the traditional sense. No inheritance is at stake. Child support payments are no longer an issue. But something more valuable is: information, which could help Minor J or his offspring practice preventive medicine and avoid future disease.

This case is being watched around the country. Baskin -- who is only asking for the genetic information, not even a name -- has the American Medical Association and the National Institutes of Health on his side. With good reason. In addition to the Michigan adoption law and conception donor practices already cited, the entire thrust of the modern health care era has been to establish and cultivate the informed patient. Most major hospitals and HMOs include access to and accuracy of medical information as part of their Code of Conduct or Patient Rights and Responsibilities policy.

Unfortunately, many of our laws are based on English common law, drafted well before the advent of modern-day medicine, which relies on accurate medical histories and, increasingly, genetic histories and sophisticated diagnostic technologies.

Does a child have equal protection under the law -- a right to know the medical history of both biological parents to help ensure a healthy lifestyle? It should go without saying.

Fortunately, Baskin has promised that he will not give up on Minor J's case.

When Baskin succeeds, our children and society will both be healthier for it.

MURRAY DAVIS *of Southfield is president of the board of the National Family Justice Association, www.nfja.org, a nonprofit education and advocacy organization for issues that adversely affect American children and families. Contact Davis at NFJAPres@aol.com.*

washingtonpost.com

States Consider Laws Against Paternity Fraud

Child Advocates Worry About Effects

By Robert E. Pierre
Washington Post Staff Writer
Monday, October 14, 2002; Page A03

LANSING, Mich. -- Edward L. Mack was floored to learn just weeks after his divorce that two of the three children born during his 10-year marriage were fathered by another man. He was even more shocked that the discovery -- under Michigan law -- meant nothing. A year later, he still pays $375 a month in child support for all three children.

"I don't think it's fair for me to have to take care of somebody else's children when she went out and slept with another man," said Mack, 55, pastor of the Spiritual Israel Church & Its Army Temple No. 8 in Detroit. "I still love the children because it's not their fault. But think about how you would feel."

In Michigan, as in most other states, the children born during a marriage are the legal responsibility of the husband. And even for single men, once paternity is acknowledged or established through the courts, it is next to impossible to change. Prosecutors and many children's advocates contend that is the way it ought to be to keep from unduly traumatizing innocent children by snatching away their emotional and financial support.

But across the country, including in the Michigan legislature, a push is underway to institute "paternity fraud" laws. The new legislation would cancel mandated child support payments -- and arrearages -- for men who can prove through DNA testing that they are supporting children who are not their flesh and blood. In some cases, the laws would provide criminal penalties for women who willingly lie about the father of their children.

"It's a legal fraud," said state Rep. James L. Koetje (R), who is sponsoring the legislation that has passed overwhelmingly in Michigan's House of Representatives. "The state should not condone or perpetuate a legal fiction."

Advocates of the new laws -- mostly men such as Mack with a personal grievance -- contend change is needed to prevent the exploitation of men by women who are promiscuous, get pregnant and then choose who they want the father to be, often based on how much money the men have. Some are pushing for mandatory testing in all unmarried births, and before any child support order is established, because most are completed without the man even appearing in court.

They point to studies by groups such as the American Association of Blood Banks, which found in 1999 that nearly 30 percent of 280,000 paternity cases evaluated excluded the alleged father as the biological parent.

"There is an epidemic sweeping this nation," Carnell A. Smith, founder and executive director of U.S. Citizens Against Paternity Fraud, testified before a Michigan Senate hearing recently. Smith said he, too, is a paternity fraud victim and now travels the country seeking legislative reform.

"It causes havoc, emotional harm and social harm," he said. "Many states have chosen to look the other way and pretend the problem does not exist."

At least 30 states have laws presuming a child born to a married couple is the man's. He can challenge that presumption in court, but most states have a statute of limitations, some as long as 10 years. Maryland and Ohio for years have allowed men unlimited time to challenge paternity using DNA testing. Georgia and California passed similar legislation this year, and several other states are considering the move.

The basis of most state law on the presumption of fatherhood is a 500-year-old doctrine in English common law designed to spare children in medieval England from being labeled as illegitimate, and therefore endowed with virtually no rights. But there is also recent history at play. As part of welfare reform efforts, states have cracked down on "deadbeat dads," forcing single women to name the fathers of their children so that taxpayers aren't left to pay for child support.

In California, a law governing unmarried births says there is a "compelling state interest in establishing paternity for all children," to ensure health coverage, social security and inheritance rights.

Many children advocates argue there must be some time limit after which men cannot contest their parental responsibility.

"At some point there is a societal need for the paternity of a child to be established with some degree of certainty," said Christi Goodman, program manager of the children and families program for the National Conference of State Legislatures. "If a man has held a child for three years as his own, he has to say that, 'Even if he's not actually my kid, I've loved and supported him for three years, and at this point he is my son even if he's not my biological child.' It's really no different from adoption in that sense."

The Michigan Federation for Children and Families has argued that the proposed legislation would make adoptions more difficult because it adds an additional layer of uncertainty if paternity cannot be established with some finality.

Child support officials worry it would upend efforts to collect legitimate child support. And the State Bar of Michigan said the state would do more harm than good by passing the bill.

"While this would seem to be a matter of fundamental fairness toward the man, it is a disastrous result when viewed from the perspective of the child," said John F. Mills, an attorney who represents the Michigan Bar's family law section. "It would eliminate child support for those children with perhaps no recourse to an alternate means of support."

But to the fathers, it's an issue of justice. A father in New Jersey has rented out a billboard to bring attention to the issue there, forming an organization and soliciting support for more than $50,000 worth of billboards and newspaper ads.

And in Michigan, Murray Davis formed Dads of Michigan to help other men who are in the same situation. A month after his marriage of 20 years split up in 1995, Davis learned that two of his three children were the biological children of his now-former best friend. He keeps in close contact with his children, but got parental rights and child support orders terminated. He wants to help others do the same.

"We are a country of laws that should equally protect the innocent and hold the guilty responsible," Davis said in testimony before a Michigan Senate committee hearing recently. "Why should we continue to pursue, incarcerate or hold in financial bondage an individual who can prove his innocence via

irrefutable evidence? Men are just kind of tired of being victimized."

reviewjournal.com

PRINT THIS

Monday, December 08, 2003

Movement targets `paternity fraud'

In Nevada and elsewhere, man pays child support even if DNA shows he's not father

By RICHARD LAKE
REVIEW-JOURNAL

A DNA test is strong enough evidence to release a wrongly convicted man from prison, but in Nevada and most other states, it won't necessarily release him from paying for a child that turns out not to be his.

"It's ridiculous. It's a matter of fairness and justice," said Murray Davis, an advocate for legislation against what he and a growing number of men nationwide call "paternity fraud."

The scenario goes something like this: A woman gives birth; a man accepts that he is the child's father; the man and woman split up; a court orders the man to pay child support; later, the man discovers that he is not the child's biological father and asks the court to relieve him from making the payments; the court refuses; the biological father gets off scot-free.

"What they're basically saying is that they're going to continue propagating a fraud," said Davis, vice president of the National Family Justice Association and a resident of Michigan.

Often, courts say it is in the "best interest of the child" for the man to continue paying support.

Davis' group and others like it have sprung up in states from New Jersey to California in recent years as DNA testing has become easily affordable.

The movement's leader is Carnell Smith, a Georgia man who discovered that the "daughter" he had helped raise with his longtime girlfriend was in fact not his biological child.

Despite a DNA test showing he was not the father, a judge ordered him to pay child support anyway. He appealed all the way to the U.S. Supreme Court and lost.

His fight spawned legislation in Georgia that allows men to fight paternity rulings even years after the child was born.

Similar legislation has passed in several other states and is under consideration in about a dozen others.

But not in Nevada. There is no discernible movement yet here, and local attorneys specializing in family law said the problem is not widespread.

The law in Nevada and most other states says that if a man initially agrees in court that he is the father of a child, there is little he can do later to get out of paying child support, no matter what the truth is.

"Don't make that mistake," said attorney Brian Steinberg, who advises all of his male clients in custody cases to get paternity tests. "If there is even a 1 percent doubt, 200 bucks is not a lot of money to find out for sure."

He and other attorneys said the state does not need legislation to take care of the potential problem; men just need to be certain about what they agree to.

"Once the courts make you dad, you're responsible," Steinberg said. "You are legally the child's father." It does not matter if, years later, a DNA test says otherwise.

That's what happened to Davis, the national advocate from Michigan.

When he filed for divorce in 1995 after an 18-year marriage, he said he had no idea that two of his three children were in fact fathered by his best friend.

Soon, he said, he learned the truth. A DNA test confirmed it.

But it was too late. The children were 11 and 12 years old by then, and he had acted as their father all their lives.

He was ordered to continue paying child support, though later the judge gave him a choice: Pay the support and continue visiting the children, or pay nothing and see the kids only at the discretion of his ex-wife.

He chose the second option.

"I trusted the fact that I knew my children well enough that eventually I would be able to re-establish a relationship," he said. "And that's exactly what happened."

A similar case wended its way through Nevada's court system a few years back, though it involved an unmarried couple.

In the spring of 1990, Gary Stenlund and Michele Poliksza split up after a brief relationship, according to documents filed with the Nevada Supreme Court.

Soon after the split, Poliksza found out she was pregnant. She told Stenlund he was the father, and he believed her, according to the court documents.

The couple remained apart, but Stenlund accepted in court papers that he was the child's father and he paid child support. Later, he petitioned for custody of the child.

Seven years after the girl was born, Stenlund came to believe the child was not his because Poliksza would not release the girl's medical information to him after he'd acquired a new health insurance policy.

A DNA test confirmed that he was not the girl's father, the court documents state. He sued, hoping to not only stop his child support payments, but to collect a refund for the years of payments he'd already made.

A lower court ruled that because he had already accepted responsibility for the girl, he could not back out. Besides, said the court, it wouldn't be in the child's best interest to lose her de facto father just like

that.

Stenlund appealed to the state Supreme Court, but lost.

His attorney, Bruce Shapiro, and other lawyers say the only way such cases can be won in Nevada is if it's proven that the mother intentionally defrauds the man, and therefore the court, as to who the true father is.

The court ruled that because Stenlund had expressed suspicions all along that the child might not be his but did not follow up on those suspicions by getting a DNA test earlier, he had given up his right to fight the paternity ruling.

In an order dismissing Stenlund's appeal, the court wrote: "Gary is the only father that the child has ever known and, although Gary contends that he does not now consider the child his biological daughter, he testified that he is bonded to the child as if he was her biological father. Gary's conduct supports this court's conclusion that Gary is now estopped from denying his parentage of the child. A ruling otherwise would clearly be detrimental to the child's best interests."

Why truth is not a defense in paternity actions

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Author(s): Diane S Kaplan
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Why truth is not a defense in paternity actions

WHY TRUTH IS NOT A DEFENSE IN PATERNITY ACTIONS

We are all bastards,

And the most venerable man which I

Did call my father, was I know not where

When I was stamp'd.

- WILLIAM SHAKESPEARE, CYMBELINE, act 2, sc. 5. I. Introduction

Legal presumptions substitute for facts that cannot be definitively proved or disproved. Presumptions that once provided efficient and effective resolutions of complex social issues, over time, may become facile substitutes for the truth. How should the law respond when advances in scientific knowledge establish that what was presumed to be true is scientifically false?

A contemporary example of this dilemma arises in the paternity context. In the absence of scientific proof to the contrary, courts dating back to the Middle Ages have employed presumptions to limit or bar the introduction of evidence to ascribe paternity. Current developments in genetic testing, however, can prove or disprove paternity and, thereby, call into question the validity of such presumptions. Consequently, courts must decide whether to preserve presumptions of paternity and legitimacy that protect children from bastardy or to yield to scientific advances that, over time, may leave us with more questions than answers.

The presumption of legitimacy holds that a child born during a marriage is the legal issue of both spouses.' This presumption was a fundamental principle of English common law that could be rebutted only by proof of the husband's impotence, sterility, or non-access to the wife.' According to Blackstone, non-access could be proven only "if the husband be out of the Kingdom of England or beyond the four seas for above nine months."' Additionally, Lord Mansfield's exclusionary rule of 1777 held that under the law of England, "the declarations of a father or mother, [could] not be admitted to bastardize the issue born after marriage."4

The social benefits served by this presumption were manifold. First and foremost, the presumption protected the legitimacy of children, which in turn entitled them to the financial support, inheritance rights, and filiation obligations of their parents.5 It prevented children from becoming wards of the state so that neither king, nor church, or taxpayer was forced to provide for them.6 It prevented a third-party putative father from insinuating himself onto an intact family by claiming to have sired one of the family's children.7 It helped to maintain the stability of the family at a time when divorce was rare and spouses stayed married notwithstanding other social relationships. The presumption also served the judicial system by allowing courts to cut off debates between irate parents about the biological origins of their children at a time when doubts about a child's genetic origins were more a matter of suspicion than science.

The presumption of legitimacy, like other legal presumptions, provides a consistent and explicit rule of law that enables courts to operate efficiently and private persons to order their private affairs with a clear understanding of the legal consequences of such undertakings. When a presumption is irrebuttable, no factual inquiry challenging the truth of the presumed fact may be entertained by the court. When a presumption is rebuttable, some factual debate as to the truth of the assumed fact is allowed. In the case of the presumption of legitimacy, the factual inquiry is limited to a few exceptions that are difficult to prove. Failure to provide such proof means that the presumption stands.

Presumptions, as legal reality principles, have their costs. For example, one thing that most people know for certain is that no one can know anything for certain. At best, one can make reasoned guesses, some of which may be right and some of which may be wrong. Presumptions, however, defy the truth of the proposition that nothing can be known for certain, for even if there is an abundance of evidence to dispute the presumed fact, the presumption bars the court from hearing such evidence. Presumptions, then, are legal constructs that serve values other than determining the truth of a particular matter. When a presumption is legally recognized, there is always something other than truth-seeking taking place, Instead, presumptions find their justification in the protection of social values that sustain order and regularity and that are deemed to be more important than truth.

Sometimes legal presumptions maintain order and regularity to a degree that greatly taxes their utility as reality principles. The presumption of legitimacy, for example, starts with a given fact-marriage-and ends with a conclusion about a different fact-paternity of the issue of that marriage. Consequently, it is possible that in one case, a judge may both grant the husband a divorce on the ground of the wife's adultery and also, relying on the presumption that all children born during a marriage are the legitimate issue of that marriage, order the same husband to pay support for the child conceived as a result of the adultery.9 To the public, this result is confusing, if not offensive, because the presumption requires acquiescence to a conclusion that is false. Adherence to a presumption under these circumstances taxes our tolerance for legally fabricated truths and renders the law an object of scorn and derision in the eyes of the public.

Until recently, American courts consistently have upheld the presumption of legitimacy. Now, however, courts increasingly are encountering credibility problems as they attempt-or avoid

attempting-to reconcile the presumption of legitimacy with current advances in forensic science. Currently, genetic testing can establish to a 99.85% certainty that a particular man is not the father of a particular child." It can also establish to a 99.99999% certainty that a particular man is the father of a particular child.11 Today, DNA testing when combined with other genetic marking tests12 can establish scientific facts that only could have been guessed at ten years ago.

As a consequence, the conflict between scientific truth and legal truth has become very disturbing. When a legal presumption is no longer consistent with the social values that previously justified its use, the presumption becomes simultaneously both true and false. The incongruity between law and science invites conflict rather than constancy as the presumption obscures rather than answers the questions it was created to resolve: What is a father? Is fatherhood a biological question or a socio-legal construct? Should courts uphold legal constructs that conflict with scientific facts that may be highly disruptive of our social order? American courts have responded to the scientific assault on the presumption of legitimacy with three very different models of reality. The three views represented by these models are either extreme and unforgiving or highly discretionary and subjective.

11. The Pennsylvania Model

The oldest model upholds the presumption of legitimacy subject to the common law defenses of sterility, impotence, or non-access." However, even if the husband successfully can rebut the presumption on one of these grounds, the court may still exclude DNA evidence of non-paternity under the doctrine of paternity by estoppel.14

Paternity by estoppel is derived from the doctrine of equitable estoppel. Equitable estoppel bars a person who made a misrepresentation from denying the truth of that statement if doing so would harm another person who relied on the representation to his detriment." Typically, the person who is penalized by the imposition of equitable estoppel is the party who made the misrepresentation-not the party who relied on the misrepresentation.

Paternity by estoppel is both similar to and different from equitable estoppel. Like equitable estoppel, paternity by estoppel bars a married man from denying the legitimacy of a child born to his marriage if he represented to the child or to the world that he was the child's father;16 if he developed an emotional relationship with the child" or provided financial support for the child;18 or if he prevented the child from developing a relationship with his or her true biological father.19 Unlike equitable estoppel, which penalizes the offending party, paternity by estoppel penalizes an innocent party-the husband-to avoid penalizing another innocent party-the child. The husband has not knowingly or intentionally induced the child's reliance on his misrepresentation of paternity because the husband, too, has been induced to rely on the misrepresentation of paternity perpetrated by his wife. However, paternity by estoppel prevents the husband from rebutting the presumption of legitimacy since once the husband is estopped to deny his parentage, biological evidence of non-paternity becomes irrelevant. The wife, in turn, is barred from testifying that she fraudulently induced one man to assume the parenting obligations of another man, because under paternity by estoppel, the wife's deceit is

as irrelevant as the husband's DNA.

This model is well represented in the case of Miscovich v. Miscovich,22 decided by the Superior Court of Pennsylvania in 1997. In 1986, Gerald and Elizabeth Miscovich married. The following year, Elizabeth gave birth to a son. Four years later, Gerald and Elizabeth divorced. The divorce decree included terms for payment of child support. Gerald did not challenge his paternity of the child during that proceeding.21 Two years later, Gerald observed that although he and Elizabeth had blue eyes, the child had brown eyes.22 Doubting his paternity, Gerald had DNA tests performed on himself and the child. The tests conclusively established that Gerald had no genetic relationship to the boy. A few weeks later, Gerald informed the child that he was not his father and discontinued all contact with him.23

Eventually, Elizabeth filed a support action against Gerald on behalf of her son. The court applied the presumption of legitimacy and found that Gerald had not rebutted it with proof of impotence, sterility, or non-access.24 The court ruled that despite the facts of Elizabeth's deceit, the termination of the family as an intact social unit, and the demise of the fatherchild relationship, Gerald was estopped to deny his paternity of the child." The estoppel not only barred Gerald from disputing his financial obligations to the child but also rendered irrelevant the DNA tests that disproved his paternity.26

Not surprisingly, Gerald felt that he had been a serial victim in the perpetration of multiple frauds. First, he was betrayed by an adulterous wife, who then duped him into assuming the parenting obligations of another man. Next, Gerald was ordered to pay child support by a court that chose to uphold the obviously false assertion that he was the child's father. One might pause to ask why Gerald was the villain in this scenario. Here is the court's answer:

We recognize that there is something disgusting about a husband who, moved by bitterness toward his wife, suddenly questions the legitimacy of her child whom he had been accepting and recognizing as his own .... Where the husband has accepted his wife's child and held it out as his own over a period of time, he is estopped from denying paternity.

Under the estoppel model, the self-perceived role of the court is to protect the social institutions of marriage and families, in general, even when they no longer exist in fact; and children, in particular, who are not only the innocent victims of their parents' indiscretions but also are least capable of bearing the costs of their own upbringing. The biological facts, no matter how scientifically compelling, are irrelevant to this view of the court as the conservator of social values. Instead, the children are treated like marital obligations that, upon divorce, are distributed equitably between the spouses, regardless of which spouse incurred the obligation.

111. The Massachusetts Model

Massachusetts has taken a wholly different approach to resolving the "nature versus nurture" paternity question. Unlike Pennsylvania, where fatherhood is a socio-legal construct, in Massachusetts, fatherhood is strictly a matter of biology.

In 1994, the Appeals Court of Massachusetts decided the case of KB. v. D.B. & another.28 K.B., the husband, and D.B., the wife, were married in 1977.29 They had unprotected sexual

relations until they separated in 1979.30 In late January of 1980, D.B. had a sexual relationship with another man. A few weeks later, at D.B.'s insistence, K.B. and D.B. met and spent the night together. Three days later, D.B. told K.B. that she was pregnant. Based on the three-day interval between relations and announcement of pregnancy, K.B. doubted that he had fathered the child.31

Nonetheless, "by the end of the pregnancy," K.B. had decided "to play the role of father to the child known as Sally."32 He attended Sally's birth, appeared as the father on Sally's birth certificate, gave Sally his last name, arranged for Sally's baptism, and selected her godfather. He purchased Christmas, birthday, and other presents for Sally. He addressed cards to "My Dearest Daughter" and signed them "Love, Daddy." K.B. signed Sally's school application and frequently took Sally to visit his relatives on weekends. Although the three never lived together as a family, K.B. allowed D.B. and Sally to live in his apartment while he stayed elsewhere. K.B. also provided a small amount of financial support to supplement Sally's welfare payments.33

When the Department of Revenue filed a nonsupport action against K.B., the court ordered blood tests that conclusively established that K.B. was not Sally's father.34 At that point, K.B. renounced his relationship with Sally and sued her mother for divorce.35 Sally was then six years old; by the time the case finally was decided, Sally was fourteen.

As a threshold matter, the court ruled that the blood tests were admissible to establish K.B.'s paternity.36 Consequently, the court never addressed the efficacy of the presumption of legitimacy. In fact, the only issue addressed by the court was the Department of Revenue's argument that K.B. should be estopped to deny his paternal obligations to Sally because he had established a parent-child relationship with her.37 In rejecting the estoppel argument, the court said, "A married man should have no duty to support a child born to his wife during their marriage but fathered by another man, any more than a wife should have a duty to support a child fathered by her husband during their marriage but born of another woman."38

The court framed the question as involving two issues, one a matter of law and one a matter of policy. The court stated that as a matter of law, paternity by estoppel did not apply because Sally had suffered no legally recognized detriment.39 The court reasoned that although K.B.'s representation to Sally that he was her father and Sally's acceptance of him as such may have satisfied the representation and reliance elements of paternity by estoppel, Sally, like most children in her situation, was benefited rather than harmed by K.B.'s provision of financial support to her." The court was unimpressed that when K.B. renounced his relationship with her, Sally was six years old and, therefore, old enough to appreciate her relationship with her father." The court noted that prior cases had refused to apply estoppel only when the child was too young to appreciate a meaningful relationship with his or her father and, therefore, too young to suffer a legally redressable injury.42 However, the court rejected those cases on the ground that such age considerations "would make the exception the rule and the 'rule' applicable only to one and two year olds."43 So finding, the court ruled as inadmissible any evidence suggesting that loss of the paternal relationship could cause psychological harm to the child.44 In sum, the Massachusetts court completely rejected, as a matter of law, the proposition that severance of a parent-child relationship upon which a child had relied as a

source of identification, love, and social and financial support could satisfy the "detrimental reliance" requirement of paternity by estoppel.45

The court also found as a matter of policy that paternity by estoppel was inconsistent with Massachusetts' interest in strengthening the family, "the basic unit of civilized society."46 The court framed this issue as a choice between two views of the state's role in "fostering the raising of illegitimate children within the protective wing of the family unit."47 According to the court, the policy that recognized estoppel chose in favor of children because of their loss of paternity, legitimacy, and financial support.48 The policy that rejected estoppel chose in favor of husbands because they had "voluntarily" assumed "the role of the father to illegitimate children born to their spouses."49 The court favored the latter policy because it "encouraged" husbands to assume fathering responsibilities of their "step children," if only temporarily, unlike the former policy, which "discouraged" husbands from assuming such obligations for fear "of becoming permanently financially obligated for child support.'" The court concluded not only by ruling in favor of K.B. but also by ordering the Department of Revenue to reimburse him for all of his prior support payments.51

The Massachusetts approach appears harsh enough to be characterized as announcing "the best interests of the husband" test. Initially, the result appears to be inconsistent with the court's concern of upholding the sanctity of the family since it encourages rather than discourages husbands who wish to disaffirm their paternal status. Upon examination, however, the Massachusetts approach to resolving paternity disputes does have some redeeming social values.

First, it is interesting to note that the caption of the case is "K.B. v. D.B. & another." "Another" is the Massachusetts Department of Revenue, which drove this case into the courts in order to increase K.B.'s child support payments for Sally. In so doing, the Department also drove a wedge between K.B. and Sally because it was that action that precipitated K.B.'s decisions to renounce his relationship with Sally and divorce her mother.

There is, of course, another "another" in this story: the biological father. Though never named, the opinion makes numerous references to the court's concern that the financial costs of Sally's upbringing should be borne by her biological father.52 Perhaps, by refusing to play ostrich and ignore the reality of such man's existence, somewhere, the court was trying to force the mother to identify the biological father so that the Department of Revenue could proceed against him rather than against the man who just happened to be the most conveniently available at the time of the child's birth. Under this approach, the role of the court is to find the truth, even if the truth hurts, because it is inconvenient or disruptive of the status quo. The Massachusetts approach tolerates no sixteenth-century legal fiction about the social conditions of the twenty-first-century family. Instead, Massachusetts recognizes that the "family unit" has undergone such significant reformulations in contemporary American society that the only "truths" to which such families should be subject in a court of law are truths that conform to contemporary realities. Hence, biological facts are not only relevant to the issue of paternity, they are dispositive.

The winners when biological facts are raised above legal fiction are the court system, whose

hands are not sullied by the frauds and follies of the parties, and the former husband, who is not burdened with the financial or social responsibilities of providing for another man's child. Another winner, of course, is the biological father, whose entire role in this scenario is to be unavailable for any purpose other than procreation. The losers are the child, who is left without financial support, paternity, or legitimacy, and the welfare department, which must now apply its bureaucratic muscle against the mother's silence to ascertain the identity of the biological father.

IV. The New York Model

The third model for determining the "nature versus nurture" paternity issue is represented by the New York approach. New York courts frame the issue as an effort to reconcile the legal presumption of legitimacy with the psychological presumption that it is in a child's best interest to know the identity of his or her biological father.

Under New York law, the presumption of legitimacy can be rebutted with DNA tests that conclusively exclude the former husband as the father of the child.53 Conversely, New York courts also recognize paternity by estoppel, which excludes scientific evidence of non-paternity.54 However, under New York law, neither the presumption, nor the DNA tests, or the estoppel doctrine is regarded as absolute. Instead, each evidentiary value is factored into a determination that is intended to meet the best interests of the child.55 Consequently, New York courts will admit or exclude DNA tests and will apply or not apply the presumption of legitimacy or the estoppel doctrine based on whether such information will assist the court in arriving at a resolution that serves the best interests of the child.56 Hence, if a substantial parent-child relationship has developed between the husband and the child and no biological father is available to tag with the costs of the child's upbringing, the New York courts may find that it is not in the child's best interests to admit DNA evidence that disproves the husband's paternity.57 Similarly, even if the biological father is available, New York courts may exclude DNA evidence that proves the biological father's paternity or that disproves the husband's paternity on the ground that forcing a father-child relationship on the unwilling parties would be detrimental to the child.58

Has New York made the most appropriate Solomonic choice? Legal positivists would disapprove of the best-interests model because it substitutes subjective, sentimental analysis for the certainties that inure from the rule of law. Rather than placing a premium on the best interests of the child, positivists would argue that the proper role of the courts is to state clearly the legal rules as to conduct and consequences so that people can knowingly conform their behavior to comply with such legal requirements. A best-interest-of-the-child analysis leaves everyone in doubt until the judge waves her magic wand in one direction or another.

On the other hand, the New York approach has created a triage of priorities that places the best interests of the child above all other interests-husband, biological father, welfare system, judicial system-unlike that of Massachusetts, which places a premium on the husband's interests, or that of Pennsylvania, which places a premium on the judicial system's interests. Under the New York approach, the best-interests analysis takes the moral sting out of the court's fact-finding determination by untethering the judiciary from moralistic reality

principles that may not hold true in contemporary society. Instead, the court acts as the arbiter of social values for the sole purpose of protecting the child. It can recognize or reject the presumption of legitimacy, the estoppel doctrine, or genetic evidence of paternity in order to achieve the overriding goal of protecting the best interests of the child.

V. Conclusion

Today, the science of genetics is challenging legal constructs that protect children from bastardy and families from state intrusion. What if tomorrow scientific advances reveal that first-trimester fetal life has high cognitive capability or that race-specific genes inhibit or promote intellectual potential? Should the law uphold time honored legal "truths" that affirm our social order at the risk that we will cleave to the notion that the earth is flat when it is really round? Or should the law yield to scientific "truths" that disrupt our social order and leave us, perhaps, with yet more illusions that we mistake for the truth?

1. In re Findlay, 170 N.E. 471, 473 (N.Y. 1930).

2. Michael H. v. Gerald D., 491 U.S. 110, 124 (1989) (citing H. NICHOLAS, ADULTURINE BASTARDY 1, 9-10 (1836)).

3. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 456 (1826). 4. Goodnight v. Moss, 98 Eng. Rep. 1257 (K.B. 1777).

5. 491 U.S at 125. See also Mary Kay Kisthardt, Of Fatherhood, Families and Fantasy: The Legacy of Michael H. v. Gerald D., 65 TUL. L. REv. 585, 588-89 (1991) (discussing the loss of right of support and inheritance from fathers if children were illegitimate).

6. 491 U.S. at 125. See also JENNY TEICHMAN, ILLEGITIMACY: AN EXAMINATION OF BASTARDY 54 (1982).

7. 491 U.S. at 121-30 (finding that the statutory presumption of legitimacy estopped putative father from challenging husband's paternity because under statute only mother or husband could rebut presumption; although the Court was unable to agree on an opinion, five justices agreed that the statute did not infringe the due process rights of the putative father). See also Ettore I. v. Angela D., 127 A.D.2d 6, 14-15 (N.Y. App. Div. 1987) (holding that the presumption of legitimacy estopped putative father from challenging husband's paternity because parent-child relationship existed between husband and child and because disproving husband's paternity would not be in child's best interest); Brinkley v. King, 701 A.2d 176, 179 (Pa. 1997) (holding that the presumption of legitimacy is irrebuttable as against a third party's assertions of paternity when the child is born of an intact marriage); John M. v. Paula M., 571 A.2d 1380, 1388 (Pa. 1990) (holding that putative father cannot invoke Uniform Act on Blood Tests to compel husband to undergo blood tests to disprove his paternity).

8. Brinkley v. King, 701 A.2d 176, 180 (Pa. 1997) (stating that the purpose of the presumption of legitimacy is to prevent marriages from being destroyed by disputes over the parentage of

the children born to the marriage).

9. See Richard B. v. Sandra B., 209 A.D.2d 139 (N.Y. App. Div. 1995) (holding husband estopped to deny legitimacy of child born to the marriage but conceived of an adulterous affair despite his suit for divorce on grounds of adultery).

10. E. Donald Shapiro et al., The DNA Paternity Test: Legislating the Future Paternity Action, 7 J.L. & HEALTH 1, 29 nn.159-60 (1992-93) ("When combined with other genetic marking tests, such as standard blood grouping tests and HLA tests, the Probability of Paternity can be raised to a Paternity Index of over a hundred million to one, or above 99.999999 percent."). See also Heather Faust, Challenging the Paternity of Children Born During Wedlock: An Analysis of Pennsylvania Law Regarding the Effects of the Doctrines of Legitimacy and Paternity by Estoppel on the Admissibility of Blood Test to Determine Paternity, 100 DICK. L. REV. 963, 967 (1996).

11. See Shapiro et al., supra note 10, at 29. See also Faust, supra note 10, at 967. 12. See Shapiro et al., supra note 10, at 19-37 (explaining the variety of genetic marking tests, the scientific methods by which they are performed, and the precision of their results); Faust, supra note 10, at 967 (explaining paternity indices and their methodologies and predictive values).

13. See BLACKSTONE, supra note 3; JAMES SCHOULER, A TREATISE ON THE LAW OF DOMESTIc RELATIONS: EMBRACING HUSBAND AND WIFE, PARENT AND CHILD, GUARDIAN AND WARD, INFANCY, SEPARATION AND DIVORCE 305 (3rd ed. 1882).

14. Freedman v. McCandless, 654 A.2d 529, 532-33 (Pa. 1995).

Estoppel in paternity actions is merely the legal determination that because of a person's conduct ... that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.... the doctrine ... is aimed at "achieving fairness as between the parents by holding them, both mother and father, to their prior conduct res;ardin me the paternity of the child."

(footnote and citation omitted). See also John M. v. Paula M., 571 A.2d 1380, 1386 (Pa. 1990) (stating that once the party asserting paternity by estoppel satisfies the burden of proving that the child was born during the course of the marriage, the blood tests become irrelevant because paternity is automatically established by the estoppel).

15. BLACK's LAw DiCTIONARY 632 (4th ed. 1972) defines equitable estoppel as follows: "The species of estoppel which equity puts upon a person who has made a false representation or concealment of material facts, with knowledge of the facts, to a party ignorant of the truth of the matter, with the intention that the other party should act upon it, and with the result that such party is actually induced to act upon it, to his damage."

16. Mancinelli v. Mancinelli, 203 A.D.2d 634 (N.Y. App. Div. 1994) (holding husband estopped to deny paternity of child born of his marriage because he developed relationship with child notwithstanding his suspicion that he might not have been the child's father prior to her birth). See also McCue v. McCue, 604 A.2d 738 (Pa. Super. Ct. 1992) (holding wife estopped to deny paternity of husband who financially supported child born of the marriage); Gullan v. Fitzpatrick, 596 A.2d 851 (Pa. Super. Ct. 1991) (holding mother estopped to deny ex-boyfriend's paternity because she held out to the world that he was the father).

17. Zadori v. Zadori, 661 A.2d 370, 373 (Pa. Super. Ct. 1995) (holding father estopped to deny paternity of child born to marriage and with whom he had established a child-parent relationship.

18. Id.; Chrzanowski v. Chrzanowski, 472 A.2d 1128, 1132 (Pa. Super. Ct. 1984) (holding husband estopped to deny paternity of child born of marriage notwithstanding stipulation of lack of sexual intercourse with wife, wife's admission that husband was not the biological father, and blood test results establishing that husband had no genetic link to child, because husband parented child for three years during which he financially supported child). See also McCue v. McCue, 604 A.2d 738 (Pa. Super. Ct. 1992).

19. K.B. v. D.B. & another, 639 N.E.2d 725, 730 (Mass. App. Ct. 1994) (stating that the application of estoppel may be based on a finding that there was once an opportunity to pursue a relationship with the natural father that has now been lost (citing Miller v. Miller, 478 A.2d 351, 358-59 (N.J. 1984))).

20. 688 A.2d 726 (Pa. Super. Ct. 1997).

21. Id. at 727

22. Id. at 727 n.I.

23. Id. at 727.

24. Id. at 733

25.Id.

26. Id. at 729-33.

27. Id. at 732 (emphasis added)(quoting Goldman v. Goldman, 184 A. 2d 351, 355 (Pa. Super. Ct. 1962)).

28. 639 N.E.2d 725, 730 (Mass. App. Ct. 1994).

29. Id. at 726 n.31.

30. Id. at 726,

31. Id.

32. Id. at 727

33. Id.

34. Id. at 726-27

35. Id.

36. Id. at 728 n.4.

37. Id. at 730. See also C.C. v. A.B., 550 N.E.2d 365 (Mass. 1990) (eliminating the conclusive presumption of legitimacy).

38. K.B. v. D.B. & another, 639 N.E.2d 725, 727 (Mass. App. Ct. 1994) (citing Symonds v. Symonds, 432 N.E. 2d 700 (Mass. 1982)).

39. Id. at 728-29, 731.

40. Id. at 728-29 ("[Ili is rarely found that the husband's past provision of financial support has worsened the wife's and child's claim on other sources of support . . . 41. Id. at 731.

42. Id. at 729 & n.6 (citing A.R. v. C.R., 583 N.E. 2d 840 (Mass. 1992) (expressing doubt that children ages two and one "relied in any meaningful sense on any representation of paternity that the husband may have made")).

43. Id. at 731.

44. Id. at 731 n.12.

45. Id.

46. Id. at 728.

47. Id.

50. Id. (quoting in re Marriage of A.J.N. & J.M.N., 414 N.W.2d 68 (Wis. Ct. App. 1987)).

51. Id. at 731.

52. Id. at 727, 730 ("The obligation to support a child primarily rests with the natural parents....")

53. See Robert L.A. v. Sharon A.R., 185 A.D.2d 977 (N.Y. App. Div. 1992); Queal v. Queal, 179 A.D.2d 1070 (N.Y. App. Div. 1992) (holding blood tests admissible to determine if former husband is child's biological father).

54. Richard B. v. Sandra B., 209 A.D.2d 139 (N.Y. App. Div. 1995).

55. See Ettore I. v. Angela D., 127 A.D.2d 6 (N.Y. App. Div. 1987); In re Sandy M. v. Timothy J., 138 Misc. 2d 338 (N.Y. Fam. Ct. 1988); Vito L. v. Filomena L., 172 A.D.2d 648, 650 (N.Y. App. Div. 1991) (stating the paramount concern of the court is the best interests of the child).

56. 185 A.D.2d 977 (holding that blood tests are admissible to rebut presumption of legitimacy only if in the best interests of the child). See also N.Y. FAM. CT. LAw 418 (McKinney 1998) (stating that blood tests may be excluded on the basis of res judicata, estoppel, the presumption of legitimacy, or if such tests would not be in the best interests of the child).

57. Vito L. v. Filomena L., 172 A.D.2d 648, 651 (N.Y. App. Div. 1991) ("[T]he effect of the [paternity] tests would only confirm the presumption of legitimacy or rebut the presumption without establishing the identity of the natural father. No purpose would be served by branding the child 'illegitimate' and depriving her of the only father she has ever known."). See also Mancinelli v. Mancinelli, 203 A.D.2d 634 (N.Y. App. Div. 1994) (holding blood test inadmissible to rebut presumption of legitimacy by former husband because he held himself out as the father to the child and to the world); Ettore I. v. Angela D., 127 A.D.2d 6 (N.Y. App. Div. 1987).

58. See 127 A.D.2d 6 (holding biological father estopped from establishing paternity of child born to intact marital family where both husband and wife objected to his establishing a relationship with the child); In re Sandy M. v. Timothy J., 138 Misc. 2d 338 (N.Y. Farm. Ct. 1988) (holding that when both mother and biological father object, judicially imposed parent-child relationship is not in the child's best interests; however, if the putative father is available and there is neither a biological father nor a husband who has established a rela

tionship with the child, then evidence of putative father's non-paternity is admissible if in child's best interests).

Diane S. Kaplan*

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William Murray, 1st Earl of Mansfield (1705-1793), Judge
Sitter in 7 portraits
Lord Chief Justice, 1756-88; architect of modern commercial law and marine insurance. Known for his eloquence, he was a firm opponent of Chatham and upheld the absolute dominion of Great Britain over the colonies. In a pioneering judgement in 1772, he held that English Law did not recognise the state of slavery. His tolerance towards Roman Catholics led the mob to burn his town house during the Gordon Riots of 1780.

NPG 474
William Murray, 1st Earl of Mansfield
by Jean Baptiste van Loo
oil on canvas, circa 1737-1738
Primary Collection

Man plans to appeal order to pay support for kids he did not father

PONTIAC (AP) — Murray Davis loves his children, even if two of the three are not his biological offspring. But he disagrees with a court order that says he must pay child support to the children.

Clarence Tucker, Davis' lawyer, told the *Detroit Free Press* that the issue is one of legality.

"I cannot stress enough that Murray Davis loves these kids," Tucker said. "And nothing on earth could make him not take care of his kids. But this case is about following the law and making sure that the biological father stands up to his financial obligations."

Oakland County Circuit Judge Barry Howard on June 20 ordered Davis to pay half the children's $247 weekly support. When the court gets finds the biological father he will have to pay the remaining half, Howard said.

Davis said he gave a lot of attention to building GeoDemX, a Southfield geographic information systems company that he owns. His "obsession" with the company drove his wife to another man, he said.

A month before his marriage of almost 20 years split up in early 1995, Davis apologized to his wife for his workaholic ways.

"I have already forgiven you for your infidelities, because they were caused largely by myself. ... My darling Marsha, I could never imagine life without you or the kids," he told her in a letter that is part of the Davises' divorce record.

In January 1995, he discovered that his wife was having another affair, according to court documents obtained by the *Free Press*. Angry, Davis sued for divorce.

A few months after the divorce action was filed, Davis had his two youngest children undergo DNA testing. The tests proved he could not be the father of the children; a 17-year-old daughter is genetically his.

Tucker said he plans to file an appeal to Howard's order.

Fred Morganroth, chairman of the Michigan Bar Association's Family Law Section, said that if Davis does appeal, he will probably fail. "If you undertook to support a child, you're stuck," he said. "The biological issue is not relevant."

Custody and support cases involving parents who are not blood-related to the children in question are not unusual — but cases of men being led to believe they were dads are fairly rare.

Tucker said that Michigan requires biological parents to pay support, not fathers who were misled into believing they were the true parents of the children.

The biological father of the two children is a purported multimillionaire who owns a Ford-Lincoln dealership in North Carolina, the newspaper said.

Acting dads, whether they know they are caring for someone else's genetic offspring or not, are legally obliged to pay support for the children "and the real, biological father might get off altogether," Morganroth said.

Davis claims he had no idea he was not the father of the two children, now 11 and 12.

Pharmacy suit settlement approved

CHICAGO (AP) — A federal judge has given final approval to a $351 million settlement that pharmacies nationwide hope will win them discounts from the country's largest drug makers.

U.S. District Judge Charles Kocoras approved the settlement, which calls for 11 drug makers to pay the owners of about 41,000 pharmacies. The owners argued the drug companies illegally conspired to deny them discounts.

Under the deal, reached in May and approved June 21, drug companies sued by the pharmacists. Those companies rejected the earlier deal and are scheduled to go to trial.

It also does not affect a separate lawsuit led by the nation's largest chain of drug stores making the same charges, and a related investigation by the Federal Trade Commission.

Also, the drug manufacturers could simply stop offering drug discounts altogether, taking the teeth out of the settlement.

The drug companies that are parties to the deal are American Home Products Corp.; Bris-

sents some of the pharmacies in the case.

HMOs, hospitals and mail-order houses restrict the brands of drugs they offer to a preferred list known as a formulary. In this manner, they can control the brands patients use. Pharmacists contend they can do the same thing — if drug manufacturers offer the same competitive prices.

Kocoras had rejected an earlier proposed settlement after complaints from some pharmacies that it didn't address the pricing issue.

2010 Hospital Birthing Stats - Wayne County

				# Births	Un-wed Births	% Un-wed births	# Paternities Est.	% Established
Sinai-Grac	Hospital		Wayne	1,542	1,321	85.70%	425	32.20%
Henry	Ford	Hospital	Wayne	2,387	1,252	52.50%	706	56.40%
Detroit	Receiving	hospital	Wayne	1	1	0.00%	0	0.00%
St	John	Hospital	Wayne	3,388	1,653	48.80%	849	51.40%
Hutzel	Womens's	Hospital	Wayne	5,591	4,537	81.10%	1,572	34.60%
Bon	Secours	Hospital	Wayne	612	217	35.50%	132	60.80%
Garden	City	Hospital	Wayne	690	388	56.20%	229	59.00%
Oakwood	Hospital	Dearborn	Wayne	4,257	1,895	44.50%	997	52.60%
Henry	Ford		Wayne	1,667	756	45.40%	523	69.20%
Heritage	Oakwood	Hospital	Wayne	1	1	0.00%	0	0.00%
Oakwood	Hospital	Annapolis	Wayne	863	497	57.60%	315	63.40%
St	Mary	Hosp	Wayne	847	247	29.20%	185	74.90%
Oakwood	South	Ctr	Wayne	637	274	43.00%	194	70.80%
			Wayne	22,483	13,039	44.58%	6,127	48.10%
		STATE TOTALS		**113,438**	**48,030**	**42.30%**	**29,984**	**62.40%**
	Wayne Co. vs. State of MI:			*19.82%*	*27.15%*		*20.43%*	

* Source: 2010 year end birthing hospital statistics, Division for Vital Records and Health Statistics, Michigan Department of Community Health. Data for the Calendar Year (CY) is finalized in June of the following CY.

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